

APPEAL NO. 050795
FILED MAY 11, 2005

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 24, 2005. The hearing officer resolved the disputed issue by deciding that the compensable injury of _____, does not extend to include disc bulges at C2-3, C3-4, C5-6, and disc herniations at C4-5, C6-7, and C7-T1. The appellant (claimant) appealed, disputing the extent-of-injury determination. The respondent (self-insured) responded, contending that the claimant's appeal is untimely and should not be considered. The self-insured further argues that the hearing officer's decision and order should be upheld.

DECISION

The hearing officer's decision has become final pursuant to Section 410.169 because the claimant's appeal was not timely filed with the Texas Workers' Compensation Commission (Commission).

Section 410.202(a) provides that to appeal the decision of a hearing officer, a party shall file a written request for appeal with the Appeals Panel not later than the 15th day after the date on which the decision of the hearing officer is received from the division and shall on the same date serve a copy of the request for appeal on the other party. Section 410.202 was amended effective June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code from the computation of time in which to file an appeal or a response. Section 410.202(d). Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(e) (Rule 143.3(e)) (formerly Rule 143.3(c)) provides that a request for review shall be presumed to be timely filed if it is: (1) mailed on or before the 15th day after the date of receipt of the hearing officer's decision; and (2) received by the Commission not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(e) must be complied with for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 020172, decided March 12, 2002. Rule 102.5(d) provides in pertinent part that, for purposes of determining the date of receipt for those written communications sent by the Commission which require the recipient to perform an action by a specific date after receipt, unless the great weight of the evidence indicates otherwise, the Commission shall deem the received date to be five days after the date mailed.

Records of the Commission reflect that the hearing officer's decision was mailed to the claimant on March 8, 2005. Pursuant to Rules 102.5(d) and 143.3(d)(1), the claimant is deemed to have received the hearing officer's decision on March 13, 2005,

unless the great weight of the evidence indicates otherwise. Although the claimant states in his appeal that he received the hearing officer's decision on March 21, 2005, the Appeals Panel has held that when Commission records show mailing to the claimant on a particular day at the correct address, the mere assertion that the decision was received after the deemed date of receipt is not sufficient to extend the date of receipt past the deemed date of receipt provided by Commission rule. Texas Workers' Compensation Commission Appeal No. 010379, decided March 22, 2001. The 15th day after the deemed date of receipt, excluding Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code, was April 4, 2005. We note that Good Friday, which fell on Friday, March 25, 2005, is listed as an optional holiday in Texas Government Code Section 662.003(c) and is thus, excluded in computing the 15-day appeal period. However, Cesar Chavez Day, which is designated as an optional holiday on March 31st in Texas Government Code Section 662.013, is not listed as a holiday, optional or otherwise, in Texas Government Code Section 662.003 and is thus, not excluded in computing the 15-day appeal period. The envelope in which the claimant's appeal was mailed to the Commission has a postage meter stamp of April 8, 2005. Since the claimant's request for appeal was mailed to the Commission after April 4, 2005, it was not timely filed with the Commission. Section 410.169 provides in pertinent part that a decision of a hearing officer regarding benefits is final in the absence of a timely appeal by a party.

Determining that the hearing officer's decision and order have become final under Section 410.169 because a timely appeal was not filed with the Commission, the Appeals Panel does not have jurisdiction to review the hearing officer's decision.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge